

IN THE HIGH COURT OF JUDICATURE OF BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

SUMMONS FOR JUDGMENT NO.434 OF 1992

IN

SUMMARY SUIT NO.1349 OF 1992

M/s Triace. ..Plaintiff.

V/s.

Wallace Flour Mills Co. Ltd. & Ors. ..Defendants.

Ms.Jigna Joshi i/b. Thakore Jariwala & Assoc., for
Plaintiff.

Mr.Sandeep Dadwal a/w.Prakash Mahadik for Defendants.

CORAM: A.M.KHANWILKAR, J**DATE : AUGUST 21, 2007.****P.C. :**

1. Heard Counsel for the parties. Perused the pleadings and documents on record.

2. The case of the Plaintiffs is that the Plaintiffs delivered and supplied goods on instructions of Defendant No.1 from time to time under the invoices at pages 15-25(Exh.B-1 to B-11) in the total sum of Rs.2,12,340/-. It is the specific case of the Plaintiffs that as per the practice, orders of such goods, to be supplied was placed by the Defendant No.1 with request to deliver it to itself or either to Defendant No.2 or Defendant No.3.

As per instructions of Defendant No.1 goods were delivered from time to time to the concerned Defendants. It is stated that no dispute regarding quality or quantity of goods supplied and delivered was ever raised by any of the Defendants. Two cheques in the sum of Rs.41,445/- and Rs.12,150/- were issued by Defendant No.3 towards outstanding dues. However, first cheque in the sum of Rs. 41,445/- when presented was dishonoured. As a result, the Plaintiffs gave joint legal notice to all the three Defendants on 24th September, 1991 specifically asserting that the goods under invoices at Exh.B-1 to B-11 were supplied from time to time to the concerned Defendants as per the instructions of the Defendant No.1. Further, the cheque issued by the Defendant No.3 towards part payment of the outstanding amount has been returned dishonoured. The Plaintiffs accordingly, called upon the Defendants to jointly and severally pay sum of Rs.2,10,340/- alongwith the interest at the rate of 18% per annum thereon. Significantly, the Defendant No.1 alone gave reply to the legal notice as per the reply sent by the advocate for the Defendant No.1. In the first place, it is conceded that the said Defendant had purchased various products like

Danglers, Stickers etc. from the Plaintiffs. But it is stated that it was not possible to confirm the exact amounts payable in that behalf. It is stated that payment would be made only after verification of the records. At the same time, in the penultimate paragraph of the reply, the Defendant No.1 has conceded that it was willing to pay to the Plaintiffs an amount equivalent to 50% of the principal amount payable to the Plaintiffs within one year from the sanctioning and approval of the Scheme of Rehabilitation by BIFR. However, in the reply to the present Summons for Judgment, a new ground has been put forth on behalf of the Defendant NO.1. Defendant No.1 though chose to remain silent regarding the assertion of the Plaintiffs in the legal notice in the that the Plaintiffs delivered and supplied goods to the concerned Defendants on instructions of Defendant No.1, in the reply affidavit however, the Defendant No.1 has asserted that no such instructions were ever given to the Plaintiffs. Besides, it is stated that no company exists in the name of Defendant No.2. In so far as Defendant No.3 is concerned, in the context of Cheque issued by the said Defendants, the Defendant No.1 disowns its liability to comply with that commitment.

3. After having gone through the materials on record, although it would appear to be a case of triable issue raised by the parties, however, in my opinion, stand taken on behalf of the Defendant No.1 for the first time before this Court does not seem to be plausible. Rather it is afterthought. For, the Defendant No.1 in the reply to the legal notice has conceded to pay 50% of the principal amount due and payable within one year from the date of the said advocate's reply. Besides, as mentioned earlier, in the reply sent through Advocate, the Defendant No.1 has in no way disputed the fact that the Plaintiffs supplied goods to either Defendant No.1 or Defendant No.2 or Defendant No.3 as per the instructions given to the Plaintiffs. In that sense, the Defendant No.1 admits the entire amount claimed by the Plaintiffs in relation to the goods sold, delivered and supplied in the sum of Rs.2,12,340/-, but however, assured to pay only 50% of that amount within one year from the date of sending reply to the legal notice, which was as back as in 1991. Since then, the Defendant No.1 has not sent any amount to the Plaintiffs. In other words, even though the invoices are in the name of the Defendant Nos. 2 and 3, in my opinion, there is

substance in the claim of the Plaintiffs that all these companies are sister companies and were operating under one roof of Defendant No.1. In the circumstances, the Plaintiffs are entitled for the relief in terms of Summons for Judgment.

4. Summons for Judgment is made absolute to the extent of Sum of Rs.2,12,340/- being the principal amount. Ordered accordingly.

5. Defendants to jointly and severally deposit the amount in this Court within four weeks from today, which will be invested in Fixed deposit in any Nationalised Bank during the pendency of the proceeding.

(A.M.KHANWILKAR, J)